

Arizona Registrar of Contractors A Guide to Contracting for Residential Construction

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A GUIDE FOR CONSUMERS & CONTRACTORS

STATE OF ARIZONA
REGISTRAR OF CONTRACTORS



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**THE MISSION OF THE REGISTRAR OF CONTRACTORS
IS TO PROMOTE QUALITY CONSTRUCTION BY
ARIZONA CONTRACTORS THROUGH A LICENSING AND
REGULATORY SYSTEM DESIGNED TO PROTECT THE
HEALTH, SAFETY, AND WELFARE OF THE PUBLIC.**

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TO BUILD OR NOT TO BUILD?

Almost nothing fulfills the American dream better than the opportunity to build your own home or remodel to suit your fancy. It's an exciting experience to see a stone fireplace, gleaming kitchen or spacious bathroom turn from a wish into reality.

Most homeowners have a limited knowledge about the construction business. This booklet has been prepared by the Arizona Registrar of Contractors to guide those who are preparing to undertake a home construction project no matter how large or small.

Contracting is a business that should be approached with the same attitude of -- **Buyer Beware** -- that would be applied in other business dealings.

For protection, those who will be hiring a contractor should do business only with licensed contractors under the terms of a written contract.

With this booklet as a starting point, your remodeling or construction project can be a satisfying part of home ownership.

LICENSING REQUIREMENT

In Arizona all contractors who perform residential and commercial remodeling and construction must be licensed and bonded. One exception, however, applies to work performed where the material and labor are less than \$750.00, there is no building permit required and the work is not part of a larger project.

To obtain a license, contractors must pass a business management test and possibly a trade test depending upon the type of construction performed. Contractors work history and experience must be listed and many license classifications require a specified length of experience. Contracting without a license is a Class I misdemeanor, punishable by up to a \$2,500.0 fine and six (6) months in jail. It should be noted that conviction of a second offense within a two-year period could be designated a felony punishable by 1 1/2 years in jail and up to a \$150,000.00 fine.

There are many kinds of contractors -- those who specialize in one area of work, such as plumbing, electrical, painting or roofing for example -
- and general contractors who will manage a job that may call for specialists in several areas.

Once you choose a contractor, you can call the Registrar's office to find out if the contractor is licensed, in good standing, suspended, revoked or on probation, and the contractor's complaint history.

Generally, the information available will help you to determine what direction to go with your selections. It is important to get all of the information regarding the contractor in question: (1) the correct name and spelling of the company, (2) contractor's license number, (3) the company owners' name. Licensed contractors are issued an identification card indicating their license number and trade classifications. If you are dealing with a representative of the company, not the owner, call the company and secure this information. A licensed contractor should not object to supplying you with this information.

Contractors are licensed for the protection of the consumer. The Registrar of Contractors can order licensed contractors to correct defective work but there is no similar recourse against unlicensed contractors who fall outside the jurisdiction of the Registrar.

It is a common myth that an unlicensed contractor is cheaper. Since there is little remedy if the unlicensed contractor fails to complete the job or do repairs, the unlicensed contractor could end up costing you substantially more in the long run.

In addition to the licensing requirements above, Arizona law provides an additional provision regarding the unlicensed contractor:

A.R.S. §32-1153. Proof of license as prerequisite to civil action. No contractor, as defined in A.R.S. §32-1101, shall act as agent or commence or maintain any action in any court of the state for collection of compensation for the performance of any act for which a license is required by this chapter without alleging and proving that the contracting party whose contract gives rise to the claim was a duly licensed contractor when the contract sued upon was entered into and when the alleged cause of action arose.

SELECTING A CONTRACTOR

When you are considering hiring a contractor, there are some important questions to ask. The final score to the quiz below is a practical tool to use in making a decision. A contractor who scores more than 300 points is a good bet.

- 1. From what source did you get the contractor's name?**
 - a. Your friends or relatives +50
 - b. The contractor's bank or suppliers +25
 - c. A trade group +25
 - d. The Yellow Pages + 5

- 2. How long has the contractor been in business under the same name?**
 - a. More than ten years +50
 - b. Three to ten years +25
 - c. Under three years - 5

- 3. Does the contractor have an office? A showroom?**
 - a. Office and showroom +50
 - b. Office +25
 - c. Telephone answering service only - 25

- 4. Who has supplied favorable references?**
 - a. Satisfied customers +50
 - b. The contractor's bank, suppliers or trade association +25
 - c. Nobody - 25

- 5. Will the contractor give you his or her home address and phone number?**
 - a. Yes +25
 - b. No - 25

- 6. Has the contractor agreed to include starting and completion dates in the contract?**
 - a. Yes +25
 - b. No - 25

7. Has the contractor made oral promises and won't include them in the contract?

- a. Yes - 25
- b. No +25

8. Can the contractor supply proof of insurance coverage?

- a. Worker's compensation +50
- b. Bodily-injury and property damage liability +50
- c. No insurance - 50

9. Does the contractor have a state contractor's license?

- a. Yes +50
- b. No - 50

10. Did the contractor offer you a written guarantee?

- a. Yes +25
- b. No 0

11. Does the proposed contract require payment of all money prior to completion of the job?

- a. Yes - 50
- b. No +50

12. Did the contractor offer you a discount for signing up at once?

- a. Yes -100
- b. No + 25

The score:

300 points or more:	Consider hiring the contractor
150 to 300:	Watch your step
Less than 150:	Better forget this guy

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GETTING READY

Now that you know some of the important questions to ask a contractor, you need to locate several that might be right for your job. Bids should be solicited from at least three (3) contractors. If possible, try to get recommendations from friends and relatives who recently have completed remodeling or building work. Another possible source is through trade organizations and associations that know the track record of individual companies. Some examples of groups to check are the **Better Business Bureau**, the **Electric League** and the **Blue Energy Institute**.

To get good bids, you need to have a detailed plan of the project when meeting with potential contractors so that the quotations can be developed from identical specifications. Because the bid amount can vary greatly with the type of materials or equipment, it is important to base bids on the same or similar types of materials. Any bid that comes in substantially below the others could be a warning signal that the contractor made a mistake or is not including all the work.

Be aware that any proposal or bid that you sign may become a contract, so be cautious about signing any documents. Pursuant to A.R.S.§44-5001, you may have a 3 day right of cancellation. Call your attorney or the Attorney General Consumer Fraud line for information.

Ask the contractor to give you a written list of work he has done recently in the area. A skilled contractor is proud of his work and should supply the list readily.

Follow up by checking with previous customers to get an idea of the contractor's work practices. Ask customers:

- * Did the contractor stay on schedule?
- * Were necessary corrections made willingly?
- * Did the contractor discuss problems and was he concerned?
- * Did customers like the completed project?

Often you will be living in your home while work is being done. Inconveniences may occur which you need to discuss with the contractor before the work begins. Most disruptions occur when water and power are shut off, when bathroom and kitchen facilities are temporarily unavailable and when dust and debris clutter the rest of the house. Plan for these inconveniences to avoid later conflicts with the contractor.

OWNER/BUILDER

It's your choice whether to hire a general contractor to supervise the project or whether to become an owner/builder. Bear in mind that as an owner/builder you will have all the obligations and legal liabilities that otherwise would belong to the contractor, including responsibility for paying state and federal taxes, workman's compensation and other insurances.

Particularly in building a swimming pool or remodeling, some homeowners elect to act as owner/builder, only to be sorry later when they find that the subcontractors try to shift the blame for any problems to the owner or to the other subcontractors.

Carefully consider whether the role of owner/builder is best for you.

The owner/builder is an exempt status pursuant to A.R.S. §32-1121 A.5, allowing the property owner to do the work either by himself or jointly with duly licensed contractors, if the structure, or group of structures, including the improvements thereto, is not intended for sale or rent. Proof of the sale or offering for sale of any such structure by the owner/builder within one year after completion of same is evidence that such structure was undertaken for the purpose of sale or rent. Prior to making the decision to build as an owner/builder it is advisable to call or pick up a copy of the contractors' license laws from the

Registrar's office. If you have questions pertaining to violations and penalties, ask for an investigator. If you need specific information regarding the construction of your project, ask for an inspector.

It should be noted that the Registrar's office cannot be utilized as a referral service to secure individual contractors to do your project. Any questions you may have should be concerning contractor's license status, laws or construction workmanship.

THE CONTRACT

An oral contract is as binding as a written contract but the terms are often difficult, if not impossible, to prove at a later time. Always put terms and conditions of your project into a written contract. To the extent possible, enumerate every particular item in writing, being as specific as you can. The contract should specify the brands of special items or materials you want. Check and make sure that special items received and installed are what you initially ordered.

Every contract should contain at least the following basic elements:

- * The date.**
- * The project price.**
- * Approximate starting and completion dates for the project.**
- * A detailed statement of the work to be done.**
- * Procedure for making payment to the contractor.**
- * Listing of all materials where possible by brand names, model numbers, grades, styles and colors.**
- * Warranty clause by the contractor and subcontractors for defects in materials and workmanship.**
- * The owner's and contractor's names and addresses.**
- * The contractor's license number or numbers.**

CHANGE ORDERS: It may be necessary to make changes once the contract is drawn. To cover this possibility, the contract should make clear that you and the contractor will agree to any changes and the cost of changes before any extra work is done. Put all change orders in writing and attach them to the contract.

PAYMENT: A schedule of payments to the contractor should be outlined in the contract. You may want to stipulate that final payment will be withheld until the project is completed and approved. This means when the certificate of occupancy has been issued and you are satisfied with the quality of work. You may want to go ahead and take occupancy and have the contractor finish minor items.

You can pay for the work directly or you can have a financial institution make payments for you. If you are paying direct, it is recommended that you make the checks payable to the general contractor and the subcontractor or material supplier. This will ensure that you do not have any problems at a later time, if a subcontractor or material supplier indicates they have not been paid. Another solution is to request lien waivers that indicate that the subcontractor or suppliers have received payments due.

LAWYERS: Since a contract is a legally binding document, you may want to have a lawyer review it before signing, but you would at least carefully read the entire document.

PROTECTIONS

When you are ready to undertake your building project, there are several steps to take that will help ensure a successful and satisfying completion. Some or all may be appropriate for you.

BONDS: The licensed contractor is bonded, but this bond does not ensure your project will be completed. For that reason on major projects worth more than \$30,000.00, you should consider obtaining a performance and completion bond from the contractor. While the smallest contractors may be unable to complete the job for any reason, this bond would cover the cost of finishing the work.

INSURANCE: You should make sure your contractor carries adequate insurance to cover any losses or accidents that may occur on the job.

LIENS: A lien waiver should be obtained from each subcontractor and material supplier. If a lien is filed against your property, it's wise to consult a lawyer immediately.

WARRANTIES: Usually your project will be covered by a contractor's or manufacturer's product warranty. A warranty is only as good as the company that issues it since it is that company's responsibility to replace a defective product.

The Registrar of Contractors has jurisdiction over a contractor's workmanship. A contractor's responsibility may come in different forms and apply for varying lengths of time, however it usually applies for a maximum of two years from the date of completion of a project or from the occupancy of the structure. For more information on warranties, see **The Manual of Minimum Workmanship Standards** published by the Registrar of Contractors.

DURING CONSTRUCTION

While your work is underway, you should maintain an up-to-date file of all documents related to the project. It is recommended that you also keep a log of telephone, one-on-one conversations (dates/times) of persons and problems encountered during the project. It is always better to have documentation to backup your allegations. The documents should include, but are not limited to:

- * **The contract and any change orders**
- * **Plans and specifications**
- * **Bills and invoices**
- * **Cancelled checks**
- * **Lien waivers from subcontractors and material suppliers**
- * **List of subcontractors**
- * **Manufacturer's warranties on fixtures, appliances and other products**
- * **All correspondence with the contractor**

INSPECTION: As construction progresses, generally building inspectors will examine the work. It is important to keep in mind that the building inspector is checking for compliance with building codes and standards of performance. The inspector is **NOT** necessarily checking for good workmanship or to see that your contract specifications are being carried out. For example, a typical city inspector might check to see if the electrical installation meets the local building code. But, he will not disapprove a project with plastic receptacle boxes when steel ones are called for in the contract, if the building code allows either. You might want a particular security lock installed on a fence around the pool, but the inspector only wants to confirm there *is* a lock. Therefore, it is important for you to make frequent inspections.

DISPUTES: No matter how extensively the homeowner prepares for a project or how thoroughly the contractor carries it out, disagreements often arise during construction.

In the event of disagreement over workmanship, the owner should attempt to resolve the problem by discussing it with the contractor. Most problems can be worked out this way.

IT'S DONE

Once your project is completed and you feel that rush of pleasure and excitement at diving into the new swimming pool or using the new family room, there is one final important task. Carefully examine the project for compliance with your contract and make a list of all defects that need to be corrected. Then conduct a joint inspection with the contractor before you accept the project. Delay making the final payment until you are satisfied all corrections have been made.

If the contractor fails to finish the job or you still are not satisfied with the quality of workmanship, you may want to take action against the contractor.

If a courtesy inspection by the Registrar of Contractors fails to resolve the dispute, there are several other remedies when dealing with licensed contractors.

For further information about workmanship disagreements, consult **Consumers and Contractors -- Handling a Dispute in Residential Construction** available at the Registrar of Contractors.

Claims may be filed in civil courts against the bond the contractor obtained in order to receive his license. In addition, the State of Arizona has established a procedure to give supplemental financial protection to residential property owners by requiring licensed contractors to participate in the Residential Contractors' Recovery Fund or to obtain a consumer bond in the amount of \$200,000.00 for all claims. If a property owner obtains a civil court judgment against the contractor, they may be eligible to collect up to \$30,000.00 from the Residential Contractors' Recovery Fund.

HOW TO COLLECT FROM THE RECOVERY FUND

The recovery fund was established to cover claims against licensed contractors made by the owner of residential real property which is occupied or intended to be occupied by the owner as a residence. Unlike the regular license bond, the recovery fund is not subject to claims by suppliers, subcontractors, laborers or other.

A homeowner may recover as much as \$30,000 from the fund. Only actual damages can be recovered. A total of \$200,000 in claims will be paid for any particular residential contractor. This means that once \$200,000 in claims has been dispersed, the fund would pay no more claims against that contractor's license.

CIVIL LAWSUIT PROCEDURE FOR RECOVERY

A civil action against the contractor for a Recovery Fund claim must be brought in either Justice of the Peace Court or Superior Court. The lawsuit cannot be commenced later than two years from the date of the commission of the act by the contractor that is the cause of the injury or two years from the date of occupancy. Plaintiff must pursue all bonds that are in effect, and this can be accomplished in the same lawsuit. Upon filing the lawsuit, written notice must be given to the Registrar, who may intervene at any time.

The claimant must provide copies of contracts, cancelled checks, front and back, and three (3) estimates of the cost for completing the work. After supporting documents are received, an inspector will schedule a meeting at the house to view the items in question. When all this information is collected, we will calculate the reasonableness of the damages requested and decide whether or not to intervene.

The homeowner must file a copy of the judgment with the Registrar along with at least twenty (20) days written notice of the intent to apply to the court for an order directing payment from the fund. If everything is complete, the court will issue a payment order. The homeowner then needs to file with the Registrar a court certified copy of the payment order. At that point the claim will be sent to administration for processing. A check is usually issued within three (3) weeks.

PLEASE NOTE: If the contractor has filed for bankruptcy, you must first petition the Bankruptcy Court for relief from the automatic stay order imposed upon all potential claimants. Once granted, you may then file your civil lawsuit as outlined above.

Although this process may seem somewhat involved, our experience is that the majority of claims are against insolvent contractors, and there will usually not be a contractor actively fighting the lawsuit, making it much easier to satisfy these requirements.

When payment is made from the recovery fund the contractor's license is automatically suspended by operation of law until the money is repaid to the fund.

ADMINISTRATIVE PROCEDURE FOR RECOVERY

If the contractor's license has been revoked or has been suspended, on your complaint, as a result of an order to remedy a violation, you may be eligible to apply directly to the fund and eliminate the civil process.

A claim form must be completed and filed with our office along with three (3) complete itemized written bids from properly licensed residential contractors for the repairs or completion of the work originally contracted for, copies of any contracts and cancelled checks, front and back. A copy of the escrow settlement should be included with claims covering new residential construction.

This entire process takes at least 16 weeks before actual distribution of funds.

Bankruptcy cases must follow the civil lawsuit procedure listed on the previous page unless the federal bankruptcy court specifically grants relief from the automatic stay order allowing access to the recovery fund under A.R.S. § 32-1154.E.

OTHER PUBLICATIONS

Copies of the following publications are available at any office of the Arizona Registrar of Contractors or on our website.

Consumers and Contractors:

A Guide to Contracting for Residential Construction

A Consumer Guide to Filing Construction Complaints

Registrar of Contractors - Statutes and Rules

Manual of Minimum Workmanship Standards

Visit our website

<http://www.azroc.gov/>

If you are planning to have construction work done, whether it is remodeling, repairs or new construction, these suggestions should be of some help.

1. Make sure the contractor is licensed
2. Plan your project carefully including detailed plans if necessary
3. Get at least three written bids
4. Ask for references
5. Ask what inconveniences will arise
6. Consider a performance and completion bond
7. Obtain a written contract
8. Make sure you understand the terms of the contract before signing
9. Be cautious about advancing monies for work not yet completed
10. Put all change orders in writing
11. Make frequent inspections